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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,276	04/12/2004	James Alfred White		5667

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JAMES ALFRED WHITE
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PINEVILLE, LA 71360-2912

EXAMINER

PETERSON, KENNETH E

ART UNIT	PAPER NUMBER
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3724

MAIL DATE	DELIVERY MODE
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01/03/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/822,276

Applicant(s)

WHITE, JAMES ALFRED

Examiner

Kenneth E. Peterson

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. Claim 1 is objected to because of the following informalities:

The term "lock nut" is used to refer to two different elements (15,12). Applicant should change these terms to "first lock nut" and "second lock nut".

Appropriate correction is required.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ross (2,464,993) in view of Mason (2,489,581), Mason (3,211,202) and Waller (2,156,645).

Ross discloses sharp fixed blade 9; blade support 4; base 3; blade angled in column 2, lines 28-34; blade 9 sharpened at cutting edge; drive spindle 22; pilot pin 20; hole through which pin 20 passes; drive nut guide 21; means for manual cranking 24, 25, 23; crank handle 24; drive nut 32, 27, 28; window opening 26; driver with four flat teeth 34, 35; pilot pin in alignment with the drive spindle centerline in column 2, lines 45-50; lock nut for pilot pin is shown juxtaposed the head of the pilot pin and elements 9 and 10 in figure 5; drive support 5; lock nut for securing the driver to the drive spindle in column 3, lines 23-28. Note continuous spiral slice adjacent element 4 in figure 2.

Ross's vertical blade is perpendicular to the drive shaft instead of being angled 20 degrees to the drive shaft. However, Mason '581 teaches just such an angling in

fixed vertical blade 13. It would have been obvious to provide Ross's fixed vertical blade with an angle relative to the perpendicular of the centerline of the drive spindle, as taught by Mason '581 in order to prevent the blade from dragging against the cut face of the remaining potato. Note the continuous spiral slice 20 in figure 5.

Ross does not disclose four rubber support legs. Examiner takes Official Notice that that it is ubiquitous for tabletop tools to have four rubber feet. For example, the speaker, monitor stand and telephone on Examiner's desk all have rubber feet. It would have been obvious to provide four rubber support legs in Ross as is ubiquitous in order to have the tool better grip the surface upon which it sits.

Ross's pilot pin goes thru a hole in the blade support, but not a hole in the blade itself. However, Mason '202 shows at 114 that this is an art recognized equivalent way of supporting the pilot pin. It would have been obvious to have made Ross's pilot pin hole go thru the blade instead of the blade support, as suggested by Mason '202, since this is an art recognized equivalent known for the same purpose. A motivation for doing so is to cut the potato all the way to the core, as opposed to cutting just partially to the core.

Ross does not disclose two metal spring type counter stop arms, however, Waller teaches two metal spring type counter stop arms 2 in figure 1. It would have been obvious to provide two metal spring type counter stop arms in Ross as taught by Waller in order to stabilize the apparatus on the table top.

The combination discloses the claimed invention except for the angle of the blade being exactly 20 degrees, teeth being 7/16" length, the spindle having 3/8"-16 threads, and the continuous spiral slice approximating 0.0625 inch thickness. It would have been obvious to one of ordinary skill in the art to provided the measurements for the elements mentioned above for the purpose of maximizing cutting efficiency for different types of potatoes, such as, sweet potatoes, Idaho potatoes, and red potatoes. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum value involves only routine skill in the art. Such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

4. Applicant's arguments have been fully considered but they are not persuasive.

Applicant argues that providing the numerals "12" and "15" is sufficient to distinguish the two locknuts from each other. Such numbering is appreciated, but the Examiner is not permitted to rely on numbering from the drawings to make such distinguishments in claims.

Applicant argues that Examiner's motivation for changing the blade angle was flawed. Examiner has now provided a different motivation.

Applicant argues that Mason's '202 feet are not rubber. Examiner has changed the rejection to reflect the ubiquitousness of this feature. Examiner can provide additional references if Applicant cares to challenge this taking of Official Notice.

Applicant argues that Ross uses only one hand, where his device requires two hands. This point is structurally irrelevant. Ross, as modified, has all of the structural elements claimed, so it does not matter how many hands you use. Your "hands" are not part of the invention.

Applicant discusses the advantages of using certain threadings on the drive shaft, but Applicant makes no arguments why selection of a particular threading would not have been obvious to one of ordinary skill in the art.

In regards to Mason '202 showing a hole thru the blade, Applicant argues that Mason's potato cutting device operates in a different fashion than his. This is true to some extent, but it does not change the fact that Mason '202 teaches that the pilot pin can be mounted in a hole directly thru the blade. The same goes for Waller.

To sum, it appears to the Examiner that Applicant has "fine tuned" an existing potato cutting device, but has not added any features that the patent office can consider to be non-obvious. This fine-tuned potato peeler may indeed be superior to its predecessors, and may indeed sell well in the marketplace, but it cannot be granted a patent for the reason set forth above.

5. This is an RCE. All claims are drawn to the same invention claimed earlier and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth E. Peterson whose telephone number is 571-272-4512. The examiner can normally be reached on Mon-Thur, 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

kp



KENNETH E. PETERSON
PRIMARY EXAMINER